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The Anti-discrimination system in Georgia in the context of the EU Visa Liberalization Action Plan

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Introduction

Anti-discrimination policies and practices are playing an increasingly significant role within an ever more multi-cultural and interconnected world. At the same time, globalization processes are further influencing the above-mentioned anti-discrimination policies and practices in order to cope with the new dynamics of networked societies.

Georgia is a young democracy, its experience in this respect starting in 1991 and consolidating step by step. One of these consolidation steps regards setting in place a legislative and institutional system of preventing and combating discrimination at the standards assumed within international and regional treaties on human rights under the UN and CoE aegis. Anti-discrimination legislation, policies and practices and their implementation both through a sound legislative framework, as well as through a coherent institutional mechanism are also a precondition set by the European Union within its political framework for cooperation with Georgia.

The current study examines both the legislative and institutional frameworks, as well as other influences with regard to the Georgian anti-discrimination system, stemming from the work of national and international NGOs in this respect, as well as from the support that the EU offers under the Neighbourhood Policy and particularly the Eastern Partnership. Within the paper, we assess the anti-discrimination legal framework in Georgia in terms of **international minimum standards**, we analyse the difficulties and challenges encountered in the creation of the Georgian anti-discrimination system and we propose concrete solutions for overcoming them.

Even though Georgia faces a lot of challenges in the field of anti-discrimination, it is extremely important that it succeeded in promoting a (perfectible) special law on anti-discrimination (May 2014) and in establishing a national equality body, the Public Defender of Georgia (PDG). Furthermore, the efforts to ensure an open and transparent law-making process in this case by organizing several public

consultations during the development of the proposed legislation were very welcomed by international organizations.¹

Therefore, the main objectives of the study envision the **identification of difficulties and challenges that authorities and civil society may encounter in implementing the anti-discrimination law** and **improving the current anti-discrimination framework**, having as centre of gravity the PDG. Additionally, the study is attempting to map the significant stakeholders in the Georgian anti-discrimination system - since a significant number of anti-discrimination provisions are to be found in other pieces of law (e.g. Civil and Criminal Code), even before the promotion of the anti-discrimination law - in order to **determine the appropriate relations between them, required for the proper implementation of the national special law.**

Moreover, as mentioned before, apart from the legislative and institutional developments, the NGOs anti-discrimination work should be acknowledged, since they thoroughly contributed to the current state of the Georgian anti-discrimination system. **Their further involvement through a well-built partnership with the PDG might lead to a substantial improvement of the Georgian anti-discrimination framework.**

The EU and its member states' expertise and resources might enable the Georgian government to build a solid and modern anti-discrimination system. Other significant enablers might be represented by the mechanisms created as part of international human rights treaties under the UN aegis, or the conventions ratified as part of the Council of Europe legal corpus.

Methodology

The current study is focused on the two main dimensions of an anti-discrimination system, namely **preventing and combating discrimination deeds**, trying to identify the main challenges in the

¹ OSCE/ODIHR Opinion on the Draft Law on the Elimination of All Forms of Discrimination of Georgia

creation and strengthening of Georgia's anti-discrimination system. The analysis is build upon the following indicators:

- The sources of law in matters of discrimination: the relevant (international and national) anti-discrimination legislation / provisions for Georgia;
- the main challenges stemming from the current (incomplete or inadequate) legislation;
- legal regulation of equality institutions, the national equality body and other major governmental stakeholders, as well as their responsibilities and limitations;
- the NGOs degree of involvement in raising public's awareness / implementing the existing legislation;
- the relation between Georgia's anti-discrimination work and the EU Visa Liberalisation Action Plan.

For the purpose of this report several analytical studies on anti-discrimination, as well as the national legislation have been consulted, allowing the authors to obtain an overview of the anti-discrimination system in Georgia. The study of national legislation was focused on the anti-discrimination law, and to a certain extent to the constitutional provisions on discrimination, as well as to the other corpuses of law treating the topic of discrimination (e.g. Civil or Criminal codes). Regarding the analytical materials used, NGOs assessments, such as Transparency International's Assessment on the anti-discrimination law in Georgia, as well as Georgian institutions' reports, such as PDG submission to Human Rights Council Universal Periodic Review, have been really insightful and useful.

We also conducted a series of interviews with representatives from the Parliament, Ministry of Justice and Public Service Development Agency, State Commission on Migration, as well as representatives of non-governmental organizations, such as Article 42, Georgian Young Lawyers' Association, Union Sapari, Identoba and Transparency International Georgia. We would like to take this opportunity and thank all the representatives of public and private institutions that were kind enough to answer our interview questions during our study trip to Tbilisi in November 2014.

Finally, we offer an overview of the Romanian experience, both from a governmental and nongovernmental perspective, underlining the lessons learned in the process of building the Romanian

anti-discrimination system, in order to identify possible solutions to improve Georgia's legislation, and to consolidate the Georgian case law, policies and institutions in the field.

1. Overview of the efforts to build an effective anti-discrimination system in Georgia

Under the pressure of the Ist Phase of the Visa Liberalization Action Plan, the legal framework in the field of anti-discrimination was set in place in May 2014. This process was practically split in two stages – At first, the Ministry of Justice was in charge of drafting it and it ensured an open process, by consulting non-governmental organizations as well as the entire community, including members of LGTB organizations, Roma communities and other ethnic minorities. However, due to the fact that, according to Georgian legislation, the Ministry of Justice itself cannot initiate draft laws and it is the Government of Georgia that is entitled to initiate a draft before the Parliament, a second stage of the drafting was set in place. This was particularly contested by civil society organizations, as the draft law suffered important changes without any inclusiveness or transparency. Only the public defender's office was involved in this second stage, while NGOs and other communities were excluded.

On 2nd of May 2014, the Georgian Parliament passed the bill and the law on the elimination of all forms of discrimination was adopted with 115 votes to one. The Law determines that the oversight body on the elimination of discrimination and protection of equality is the Public Defender. One of the main changes included in the final version of the law is related to the public authority that would be in charge of anti-discrimination cases. As such, the initial draft was set to create a new independent body, the institution of Equality Inspector, which would have the mandate to impose financial sanctions in cases of discrimination. This was seen by the civil society as an important step towards creating an effective national mechanism. However, in the second draft, the institution designated as national mechanism in charge of combating discrimination was the Public Defender's Office, who, according to the law, is unable to enact legal decisions and financial sanctions in cases of discrimination. As such,

the Public Defender's Office can only make non-binding recommendations, which is one of the main concerns that we came across in our interviews with stakeholders.

During the entire process of drafting the law, it faced a strong opposition from the Orthodox Church, Patriarch and radical orthodox groups who were asking for removing "sexual orientation" and "gender identity" from the list of prohibited grounds of discrimination. After the law was released, the Patriarch has declared that he cannot agree with the last version of anti-discrimination law either, considering that the interests and rights of a segment of Georgian population need to be defended².

However, the Prime Minister and the opposition group agreed on the major importance of adopting the bill and its importance for the relation between Georgia and the EU, the law being a part of the set of preconditions for Georgia being granted relaxed visa procedures with the European Union. The President himself underlined that the law will contribute to a better informed society and it could be a step forward in keeping the whole society united, overpassing the misunderstandings which divided them in the last twenty years.

In the context of a high degree of intolerance towards representatives of religious and sexual minorities in the Georgian society, the Public Defender considers the entry into force of the Law of Georgia on the Elimination of All Forms of Discrimination to be an important step forward, even though certain amendments shall be made to the Law for its effective implementation. It is however worth mentioning that the first steps in the good direction have been made, especially since, several months later, the Office of the PDG received the financial resources necessary for implementing its functions, as prescribed by the Law.

² Human Rights House, <http://humanrightshouse.org/Articles/20133.html>

2. The current legislative, institutional and implementation situation in Georgia

2.1. Main sources of law in matters of discrimination

The legal provisions on anti-discrimination are originating from the Constitution of Georgia, where the equality in “*social, economic, cultural and political life*” is granted “*irrespective of [citizens] national, ethnic, religious or linguistic belonging*”³.

However, the inner centre of gravity for Georgia’s anti-discrimination legal system lies within the *Law of Georgia on the Elimination of All Forms of Discrimination*, which further develops the constitutional provisions. The law was initially drafted by the Ministry of Justice, went through several changes made by the Government and the Parliament and it was adopted at its third reading in May 2014. In the process of drafting this law, all international treaties, EU directives, as well as the anti-discrimination laws of several countries have been taken into consideration, in order to ensure that the law is within international standards. The definition of discrimination in this Law is similar to the Strasbourg Court’s definition.

Apart from detailing the notion of discrimination, Georgia’s anti-discrimination law is stating a number of obligations for the institutions (e.g. internal regulations for compliance to the anti-discrimination legislation) and it is designating the national authority for the elimination of discrimination and ensuring equality (the Public Defender of Georgia / PDG) and its attributions. Additionally, the Civil Procedure Code of Georgia is prescribing PDG and court proceedings in discrimination cases and it comprises provisions on the confidentiality of the information related to the victims of discrimination. As mentioned in the first chapter, the promotion of a special law on anti-discrimination was a challenging process in Georgia, given the opposition of some stakeholders like the Orthodox Church, who addressed the Parliament or led street rallies against the law.

³ In *Chapter Two. Georgian Citizenship. Basic Rights and Freedoms of Individual*, article 38.

As a consequence of this struggle, a particular note of the law is related to provisions regarding the **reservation on the protection of public morals**, the rejection of any restriction for the rights of religious associations, as well as the requirement to comply with the *Constitutional Agreement between the State and the Apostolic Autocephalous Orthodox Church of Georgia*.

As we indicated in the introduction, the final text of the anti-discrimination law was a watered down version of the draft initially issued by the Ministry of Justice, with the main negative change being that the legislators considerably diminished the efficiency of the implementation mechanism by **eliminating financial penalties for the offenders**. The lack of an effective mechanism of enforcement (by the PDG) raised the criticism of human rights NGOs, since the appeals to the court for solving discrimination complaints are far more difficult given the legal procedures and the reluctance of victims of discrimination to address the court.

A comprehensive study of Transparency International Georgia⁴ emphasized some other problems with the anti-discrimination law, such as not granting the PDG supplementary powers – e.g. the **power to issue a mandatory act on elimination of discrimination in respect of a relevant agency without the need to address the court**. Moreover, the study emphasized **the lack of planned measures to increase public awareness with regard to the law** prior to its examination by the Parliament.

Nevertheless, in order to enhance the reach and the potential of the Georgian anti-discrimination system, the PDG addressed the Parliament⁵ with a proposal to amend the Law on the Public Defender, the Civil Procedure Code, the Labour Code and the Law on Civil Service. The legal updates envision **the increase of the three-month period of application for a discrimination complaint to the court to one year, the provisions for an enforcement mechanism to oblige the involved persons or entities to provide all the materials related to the case hearing**, as well as for **an application mechanism for enforcement of decisions passed by the PDG to the previously mentioned entities**.

⁴<http://transparency.ge/en/node/4390>

⁵<http://www.ombudsman.ge/en/recommendations-Proposal/winadadebebi/legislative-proposal-to-the-parliament-of-georgia-for-the-purpose-of-improvement-of-the-law-on-the-elimination-of-all-forms-of-discrimination.page>

We believe this is one of the main steps to enhancing the effectiveness of the anti-discrimination fight in Georgia and that, in the following period, civil society should monitor and advocate for these changes to be made.

2.2. Anti-discrimination provisions in other related laws

The provisions of the special law are supplemented by specific stipulations in other related laws or corpuses of laws, such as the above-mentioned Civil Code, the Criminal Code or the Labour Code.

The **Civil Code** is treating discrimination with regard to domestic relations and marriage, prohibiting direct or indirect preferences “*based on origin, social and property status, racial and ethnic background, sex, education, language, attitude to religion, kind and nature of activities, place of residence and other factors*” (Article 1153). The adjudication of discrimination cases is further treated in the Civil Procedure Code, including with regard to the burden of proof (article 363³).

The anti-discrimination references in the **Criminal Code** are mainly related to the criminalization of any violation of equality “*based on language, sex, age, citizenship, origin, place of birth or residence, financial or official position, religion or faith, social or professional affiliation, family status, health, sexual orientation, gender identity and expression, political or other views*”, which reaches the threshold of criminal offence (article 142). Article 142¹ prohibits racial discrimination as a separate criminal offence.

Supplementary, any criminal offence committed with the motive of intolerance “*on the base of race, skin color, language, sex, sexual orientation, gender identity, age, religion, political or other opinion, disability, nationality, national, ethnic or social origin, financial standing, place of residence or any other distinguishable ground*” is treated as committed with aggravating circumstances (article 53¹).

The elements regarding racism and intolerance are also mentioned in conjunction with the prohibition of genocide (article 147, “*full or partial elimination of any national, ethnic, racial, religious or any other group*”), as well as with the crimes against humanity (article 408, “*persecution against any identifiable group on political, racial, national, ethnic, cultural, religious or other grounds*”). Anti-

discrimination provisions are also included in the Criminal Procedure Code, with regard to discrimination against the candidates for a jury (article 223(6), “*on the basis of race, color, language, sex, belief, ideology, political opinion, membership of any union, ethnical, cultural and social belonging, origin*”, etc.).

The **Law on the Rights of Patient** prohibits discrimination against a patient “*on the basis of race, colour, language, sex, genetic heritage, religious convictions, political and other views, ethnic or social origin, economic condition or status, place of residence, disease, sexual orientation, or negative personal attitude*” (Article 6.1). Further, the Law on Health Care also prohibits discrimination against a patient based on *race, skin colour, sex, religious convictions, political and other views, ethnic and social origination, property or title status, place of residence, disease, sexual orientation or negative personal attitude* (Article 6.1).

Last, but not least, in the **Labor Code**, apart from a general reference regarding the prohibition of “*all discrimination in a labour and/or pre-contractual relations*” on diverse grounds⁶, a specific reference is made with regard to the prohibition of discrimination in the case of the memberships in the associations of employees⁷.

However, there is no control instrument yet since there are no labour inspectors. There is a commitment under the New Georgia Agenda, already signed and enforced, to create positions of labour inspectors, who will be controlling labour issues, including discrimination. This should be carefully monitored and advocated for by civil society.

At the same time, a number of provisions with regard to the observance of the non-discrimination principle are included throughout the contents of various codes of conduct for different lines of work: broadcasting, teachers, police, employees of the penitentiary system or prosecutors. For instance, while

⁶ E.g. race, skin colour, language, ethnic or social belonging, nationality and so on. There are around 19 discrimination grounds, in the case of some of them the list remaining open – e.g. political or other affiliation.

⁷<http://www.amcham.ge/res/various/labor-code-of-georgia-en.pdf>

the Code of Conduct for Broadcasters includes a separate chapter on diversity, equality and tolerance, the Code of Conduct of Public Broadcaster requires the Georgian Public Broadcaster to take into account the non-discrimination principle when preparing programs on ethnic and religious minorities.⁸

The **Law on Gender Equality**, adopted in 2010, prohibits of all forms of discrimination based on sex in all spheres of social life and provides for creation of appropriate conditions for implementation of equal rights, freedoms and opportunities of women and men, support prevention and elimination of all kinds of discrimination based on sex. Under the Law, the supervision over the protection of gender equality is the responsibility of the Parliament of Georgia, local authorities and Public Defender of Georgia. However, the Law remains rather of declaratory character since it lacks enforcement mechanisms, under which individuals could seek remedy and redress for the violation of the Law.

2.3. International treaties and conventions ratified by Georgia in the field of discrimination

The treaties and conventions ratified by Georgia in the field of anti-discrimination were primarily concluded under United Nations (UN) or Council of Europe (CoE) aegis.

The UN anti-discrimination legal corpus is based on three main pillars - the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the 2006 Convention on the Rights of Persons with Disabilities (CRPD).

Georgia ratified CEDAW in 1994 and CERD in 1999 and in 2008 summoned the Russian Federation in front of the International Court of Justice (ICJ) for breaching CERD (articles 2, 3, 4, 5 and 6) through its actions in South Ossetia and Abkhazia. It is worth noting that Georgia recognizes article 14 of CERD, which provides an important tool in anti-discrimination, taking discrimination cases to an international court.

⁸ Human Rights Council Ad Hoc Committee on the Elaboration of Complementary Standards, Sixth session, Geneva, 7 – 17 October 2014, <http://www.ohchr.org/Documents/Issues/Racism/AdHoc/6thSession/Georgia.pdf>.

However, as regards the CRPD, while Georgia ratified it in 2013, **the government failed to harmonize the national legislation with the CRPD and CRPD Optional Protocol was not ratified yet.**

As regards the CoE relevant conventions, Georgia ratified the Framework Convention for the Protection of National Minorities in 2006 and it signed the 2011 CoE Convention on Preventing and Combating Violence against Women and Domestic Violence, which still has to be ratified.

Georgia also ratified the CoE Convention (including Art. 14) in 1999 and Protocol no. 12 in 2001. The Istanbul Convention against domestic violence was signed but not yet ratified. The amendments to national legislation, which are being prepared by the Ministry of Justice of Georgia, are still pending, although the initial plan was to adopt them by the end of 2014.

2.4. Institutional framework for anti-discrimination

The Public Defender of Georgia: Mandate and duties; Monitoring, data collection and reporting; Current limitations; Strategies and action plan for implementing the law

As of 2014, the Public Defender of Georgia (PDG) is designated as an equality body under the anti-discrimination law and monitoring body for the implementation of 2006 UN CRPD. The mandate and duties of the PDG are stipulated both in the Organic law of Georgia on the PDG, as well as in the anti-discrimination law.

In order to fulfil its anti-discrimination mandate, the PDG has to monitor activities of the authorities, public institutions and physical or legal persons, in order to “*detect facts of direct and indirect discrimination and take measures to eliminate the consequences of discrimination*”. Furthermore, the PDG has to “*ensure effective protection of persons from discrimination under international agreements recognized as binding by Georgia*” (including UN and CoE recommendations).

As a consequence, the PDG enjoys a certain amount of powers, including to discuss the complaints and examine discrimination acts, to prepare general proposals or opinions for changing the law, to settle discrimination cases or, finally, to apply to the court if an administrative body does not comply with the recommendation of the PDG. Additionally, the PDG collects statistical data and raises public awareness on discrimination.

However, the main limitation with regard to PDG powers is related to the lack of a sanctions regime as part of the anti-discrimination law. Therefore, the institutions or persons found liable under the anti-discrimination law cannot be sanctioned, even though the PDG has “to restore violated equity”. Those opposing the idea of granting PDG repressive powers are using as main argument the fact that the Constitution states that PDG’s role is to identify the violations of human rights, not punishing the offenders. Moreover, the ability to punish the offender would be in opposition to PDG’s mediator role. Discrimination cases are solved by the Equality Department of the PDG, which has five employees according to the information published on the PDG website⁹. Among the cases discussed by the PDG in 2014-2015 the most spread grounds for discrimination regard the political views, the ethnic origin, the affiliation to trade unions, and the religious grounds¹⁰.

The PDG is also involved in a number of legislative or policy initiatives meant to support anti-discrimination efforts. For instance, in November 2014, the PDG promoted a policy document for prevention of sexual harassment at workplaces, asking the public and private entities to establish internal response mechanisms for combating such a development.

Another example in this sense is the proposal of the PDG to the Parliament (already mentioned at 2.1) regarding changes in the Law on the Public Defender, the Civil Procedure Code, the Labour Code and the Law on Civil Service.

⁹ <http://www.ombudsman.ge/ge/diskriminaciis-prevenciis-meqanizmi/tanamshromlebi>

¹⁰ <http://www.ombudsman.ge/uploads/other/2/2354.pdf>

Other bodies/institutions are also involved in the fight against discrimination. An example in this sense is the appointment of the Assistant to Prime Minister in Human Rights and Gender Equality Issues, who is in coordination with all the ministries, which is a very positive development. Also, the interagency council for combating domestic violence is renewed and chaired by the prime-minister, which will make it more effective in coordination. This council will gather representatives of all the line ministries, while international organizations and NGOs have consultative status.

However, one more essential instrument is missing for all these actors to be effectively preventing and combating discrimination, which is an **Anti-discrimination Strategy** and an **Action Plan** for its implementation. This could not only guide the efforts of the actors involved, but provide a sound support for monitoring and evaluation of the progress achieved.

2.5. Implementation of the current anti-discrimination legal framework

As previously shown, one of the main issues in the implementation of an effective anti-discrimination framework is the lack of a system of sanctions that could be enforced by the PDG. The alternative to appealing to the PDG is the court system, with more complex procedures, a shorter time limit for registering the complaint, as well as court fees, which can all be discouraging for vulnerable categories, as well as for the ordinary citizen.

„It is 100 laris to go to the court; if you demand also material damages then you have to pay 3% out of the entire sum So it is also about money, and people especially in the rural areas do not have money.”(NGO representative)

Moreover, according to NGO representatives interviewed, most of the times the victims of discrimination are unwilling to go to court, regardless of their financial situation or of their level of education. The court system is perceived as distant from the citizens, and especially in a society where the gravity of the act of discrimination is not yet fully assimilated by the population, it is unlikely that anti-discrimination can be effectively done in courts.

“Here we have a problem because we don’t have this culture of using courts and using laws. It is a very big problem. Even with court representation for free it is still very difficult for them to go in court. I mean educated women hesitate. I am not talking about other people that may have less information and do not have very clear vision of the problem and don’t have the solution. I am speaking of women with higher education that know how the court works.” (NGO representative)

However, as the anti-discrimination system is presently based more on courts, it is essential that the PDG acts together with other institutions, such as international organizations and national training institutions, to organize anti-discrimination trainings for magistrates.

“Judges do not know how to work with discrimination cases. How to decide the cases, how to implement a law or how to interpret the law. I really think that it will be a problem when we will start to bring cases in front of the court.” (NGO representative)

In order to be able to have an assessment of the situation on implementation, the monitoring function of the PDG is essential. Since the law was adopted in May 2014 and most of the staff of the Equality Department was appointed towards the end of the year, so far there wasn’t much time to monitor the implementation. While the the Public defender’s office had received 84 cases by April 2015, there is no monitoring of anti-discrimination cases in court. However, we know that there are 11 applications submitted by the anti-discrimination coalition to the Court, using the anti-discrimination law. 1 application, relating to gender discrimination in labour relations, resulted in friendly settlement. Another one on discrimination based on political opinion was not granted. The rest of the applications are pending. Also, an application using the anti-discrimination law concerning discrimination against Jehovah’s witnesses was granted, in which the PDG had intervened as a third party.

With only five staff members in the Equality Department of the PDG and no sanctioning abilities, there is little capacity in the institutional framework to deal with the wide array of discrimination issues present in the Georgian society, which leaves NGOs to do an important part in monitoring, awareness raising and taking cases to court or to the PDG. As we understood from the interviews conducted with

NGO representatives, whilst the concept of discrimination at large is not yet fully understood and assimilated by the population, there are some issues that cause most problems within society. These issues are approached in a differentiated manner by civil society organizations, depending on the impact sought.

- ***Ethnic discrimination in public spaces***

“A person with black skin was kicked out of McDonalds and the Shopping Malls, they had some difficulties and we brought this case to the public’s defender’s office”.

(NGO representative)

NGOs try to deal with this type of issues by using the public’s defender’s mechanism. There is however a stringent need to raise awareness and change the public attitude on this through further regulations for such incidents in public spaces.

- ***Religious discrimination***

Religious discrimination and religiously motivated violence is an important issue, both in schools and in society at large, which receives lack of attention from law enforcement authorities. There has been no effective investigation in the acts of violence committed against Muslim population in 2012-2013. Restitution of property confiscated during the Soviet period, tax inequality, discriminatory environment on the basis of religion in public schools, limited access to public spaces and hate speech against religious minorities remain significant issues.¹¹ As one NGO representative told us, even though the Georgian legislation enshrines the principle of secular separation between the Church and the State, „Church related school principals violate the principle of this secularity and they force children to change their religion. They conduct indoctrination of the pupils. We’ve got a case where children of Witnesses of Jehova faith were forced to become orthodox and they tried to commit suicide. Children from muslim communities are also harassed by fellow students and teachers.” (NGO representative)

¹¹ The Situation in Human Rights and Fundamental Freedoms in Georgia – 2014 - Annual Report of the Public Defender of Georgia, p. 427. Available at: <http://www.ombudsman.ge/uploads/other/2/2439.pdf>

- *Gender-based discrimination*

Domestic violence and growing instances of femicide have recently attracted increasing attention from the media. According to one NGO representative that has been interviewed, there have been about 24 femicide cases in Georgia in 2014. The Governments' response to this issue is considered to be very unsatisfactory by civil society. According to NGOs working on this issue, there is a law on domestic violence since 2006 and it has been criminalized since 2012, further changes to the law on domestic violence being made in 2014, so there is an appropriate legal framework in place to fight domestic violence. However, while this is a criminal issue in itself, the implications relating to anti-discrimination are clear and the legal measures should be complemented with efficient policies in this regard, whether related to social assistance for victims of violence or trainings for law enforcement agents.

„Recently the media got interested in the femicide issue, mainstream media. They were previously neglecting this issue but the situation has changed, because a man has killed his former wife in one of the universities under the eyes of her students. He entered into the university building and shot. Media took attention on this case.” (NGO representative)

„In another case a 19 year old girl was killed by her former husband because of jealousy and we are now with the case at the European court of human rights. We are arguing that in this case the state failed to fulfil its obligations to protect her life. The person that killed her was an acting police officer, and when the victim called the police to protect her before she got killed, the police that came at the scene of violence were his friends and they started to mock her.” (NGO representative)

Domestic violence is present mostly in the regions, but it also affects big cities in Georgia, e.g. the femicides of 2014.

„With 8 regional offices, we offer legal consultation to women from our offices. In the first four months of 2013 there were 1535 women who came to our offices and complained about being victims

of violence/ being abused and demanded consultation on what is to be done legally. In the first half of 2014 the number was almost 900. This is the combination of Tbilisi office and the regional offices. However in the first 1535 cases there were only 23 from Tbilisi and the rest in the regions."¹² (NGO representative)

Another form of this grave discrimination is constituted by sex-selective abortions. According to NGO representatives interviewed, Georgia is one of the countries that have a major problem with abortions based on the sex of the foetus. Whilst this issue should not be legally regulated, it proves how much it needs to be invested in education and awareness raising to produce the necessary change in the mentality of the Georgian people on the long term.

The gender issue is also problematic from the perspective of early marriages. According to NGOs interviewed, it takes place often in regions where Azeri and Armenian minorities live. Girls are deprived from completing secondary education and the parents of the girls get money for their marriage. While early marriage is not criminalized, under the Georgian criminal code sexual intercourse with a minor and forced marriage are criminalized¹³. The ombudsman reported that early marriage of girls was a persistent problem, which took place either with an agreement between parents or through kidnapping. The public defender highlighted a case in eastern Georgia where a father sold his minor daughter for 10 cows to a 45-year-old man.¹⁴ The number of marriages under 18 is reported to be 14%, while for persons under 15 the figure is 1%.¹⁵ However, as the Ombudsman suggests this data is not accurate, as there is no consistent collection of statistics.¹⁶

¹² The population of Georgia is 4 million people, out of which almost half are based in Tbilisi.

¹³ Criminal Code of Georgia, Article 150¹ (Forced Marriage) & Article 140 (Sexual Intercourse or Other Act of Sexual Nature with a Person Below 16).

¹⁴ The Situation in Human Rights and Fundamental Freedoms in Georgia – 2013 – Annual Report of the Public Defender of Georgia, p. 275, available at: <http://www.ombudsman.ge/uploads/other/1/1934.pdf>

¹⁵ http://www.cfr.org/peace-conflict-and-humanrights/child-marriage/p32096?cid=ppc-Google-grant-infoguide_child_marriageunderstanding_ad&gclid=CjwKEAju56moBRD8_4-AgoOqhV4SjADWWVCctba3hsxexTq-yNGGBQtPCj3CkyPiuwaxFfnZPbOFRoCBgHw_wcB#!/>

¹⁶ The Situation in Human Rights and Fundamental Freedoms in Georgia – 2014 – Annual Report of the Public Defender of Georgia, p.686, available at: <http://www.ombudsman.ge/uploads/other/2/2439.pdf>

According to data from the Ministry of Education, 7,367 girls stopped going to school from 2011 to 2013 because of early marriage.¹⁷

- ***Discrimination based on age***

Whilst there are no official data in this regard, NGO representatives believe that people over 40 find it hard to get a job and are expelled from public/private sector opportunities.

“I know a case of someone being fired because of age but he didn’t agree with us to go to the court. He was 55 years old and he was fired because of his age from an entity dealing with architectural outfits of this city, which was under the umbrella of the local government.”

(NGO representative)

- ***Discrimination based on sexual orientation***

Discrimination against LGBT is very prevalent in the Georgian society. This became particularly evident on 17 May 2013, when NGOs Identoba and Women’s Initiatives Support Group planned to organize a demonstration to mark the international day against homophobia and transphobia (IDAHO) in Tbilisi. At the same time a counter-demonstration, including clergymen, was held with several thousands of participants, who violently dispersed the IDAHO demonstration and inflicted physical injuries to the demonstrators. The police was unable to stop the violence.¹⁸ No effective investigation was conducted and perpetrators have not been brought to justice for violence against LGBT persons and their rights defenders. Discrimination in health care also proves to be a significant issue for LGBT persons.¹⁹

¹⁷<http://www.hrw.org/world-report/2015/country-chapters/georgia?page=3>

¹⁸ The Situation in Human Rights and Fundamental Freedoms in Georgia – 2013 – Annual Report of the Public Defender of Georgia, p. 190, available at: <http://www.ombudsman.ge/uploads/other/1/1934.pdf>

¹⁹ NGO collation submission on Georgia for the 2nd Cycle of the Universal Periodic Review, 23 March, 2015.

- *Discrimination against Roma*

The Roma community faces the toughest challenges in Georgia, being discriminated in every daily aspect of their lives. There are no reliable data on the number of Roma living in Georgia, while some available data show that they are approximately 1500-2500. Roma live in extreme poverty, they have no I.D. documents (other than few exceptions), they do not receive health care at medical establishments and are illiterate. They are discriminated in seeking employment because of the negative stereotypes and are not employed in either public or private institutions.²⁰ Roma are uninformed about their rights and remedies they can seek in case of discrimination.

- *Discrimination against Persons with Disabilities*

For persons with disabilities discrimination in access to physical environment, buildings and premises, transport, as well as to information and technologies remains one of the major issues. Internally displaced women with disabilities are particularly vulnerable to discrimination. Women with disabilities suffer double discriminatory treatment when applying for a job, equal pay and career promotion.²¹ They are under heightened risk of sexual abuse, exploitation and neglect.²²

- *Hate speech*

There is a need for enhanced cooperation between the PDG and civil society on awareness raising on hate speech, especially since there are no legal mechanism and it is not criminalized neither discredited by the administrative legislation or criminal law. The specific provision in the law on broadcasting

²⁰ The Situation in Human Rights and Fundamental Freedoms in Georgia – 2013 – Annual Report of the Public Defender of Georgia, p. 176, available at: <http://www.ombudsman.ge/uploads/other/1/1934.pdf>

²¹ "Employment Barriers for Women with Disabilities", Arthur O'Reilly, The Right to Decent Work of Persons with Disabilities, Skills Working Paper No. 14, Geneva, International Labour Organization, 2003.

²²The Situation in Human Rights and Fundamental Freedoms in Georgia – 2013 – Annual Report of the Public Defender of Georgia, pp. 283-289, available at: <http://www.ombudsman.ge/uploads/other/1/1934.pdf>

referring to hate speech is welcomed²³, but incomplete (Every media group with license is obliged to set up a special commission to judge hate speech and give disciplinary sanctions to the employees if they use hate speech). Whilst Georgia has an approach rather closer to the American view on the delimitation between hate speech and freedom of speech, the latter being stronger in this case, it is advisable for Georgia to adopt standards that are more sensitive to hate speech and, as such, closer to the European vision on this issue.

“For example one of the employees at the Ministry of Justice uses this hate speech and she was fired. This was prescribed under the regulation under the rule of the ministry of justice. This secondary regulation prohibited hate speech being used by the employees of the ministry, so she was fired from the ministry. This was one instance when hate speech used by a public civil servant didn’t go unpunished, but no criminal sanction will be imposed or even administrative punishment.” (NGO representative)

Legislative amendments in the Criminal Code of Georgia are currently underway to criminalize incitement to violence. However, NGOs fear that amendments, if adopted, will serve as a political tool to limit the freedom of expression and will not be applied for the protection of vulnerable groups.²⁴

- ***Discrimination on political bases***

As we understood from the interviews conducted, there is an issue regarding the discrimination of employees in local administrations that were employed under the previous government (this occurs when the political power shifts). As this is an issue that affects not just anti-discrimination efforts but also democracy at large, it needs to be fought. Whilst legally there is protection for these cases, victims seldom receive redress, as they are reluctant to apply to the court.

²³ The Law on Broadcasting, Article 56.3

²⁴ Joint Statement of NGOs and Medial Organizations on the Draft Law on Public Incitement to Violence, 17.04.2015, available at: <https://gyla.ge/geo/news?info=2476#sthash.SC211CnZ.gbpl>

- *Harassment*

Harassment is not included in the anti-discrimination law, although it was mentioned in the initial draft. It is covered by the labour code²⁵, which is helpful for the harassment cases that happen in employment but useless elsewhere. Despite this, employees are reluctant to seek redress in cases of sexual harassment at the workplace and such cases remain largely underreported. Harassment in labour relations is also covered in the gender equality law²⁶, but this law has no enforcement mechanism so it cannot be implemented.

Another major obstacle in the implementation of the law is that the Public Defender lacks one more important tool: **a dedicated strategy**.

This is one of the main tools for monitoring and evaluating the degree of implementation for the anti-discrimination law. However, Georgia has approved its **National Strategy for the Protection of Human Rights for 2014-2020** in March 2014 (which was an obligation under the 1st phase of the Visa Liberalization Action Plan), that includes the non-discrimination dimension, through a series of specific measures. At the same time, as part of the tasks for implementing the strategy, under the PDG authority there are particular references to anti-discrimination efforts (e.g. combat discrimination on the basis of sexual orientation or gender identity or ensure immediate and appropriate response to reports of discrimination). Moreover, Georgia created an **Action Plan for ensuring equal opportunities for persons with disabilities in 2014-2016**, which envisages the fulfilment of obligations under the Convention on the Rights of Persons with Disabilities.

However, the references to anti-discrimination measures might be better organized and detailed in a dedicated strategy. For instance, the pillars of the Romanian anti-discrimination strategy 2007-2013 were: protection (against discrimination), inclusion (equality in employment), promotion (equality in

²⁵ Labour Code of Georgia, Article 2.4

²⁶ Law of Georgia on Gender Equality, Article 6 (a;b)

accessing the public service), acknowledgement (culture of diversity and of mutual understanding) and prevention (of discrimination), and they were further monitored and detailed throughout the document. A specific strategy might also take into account particular details with regard to some of the ethnic minorities like the Roma, the access to culture for the national minorities, in order to preserve, express and develop their cultural identity, especially since there are very few magazines and shows, TV and radio broadcasts in the national minorities' languages. The limited access to information, as well as to the daily news in minorities' languages led to situations where representatives of minorities' couldn't stay informed on the current social, political or economical situation in the country. Moreover, the use of the native language in interacting with local public institutions and the proportional representation of ethnical minorities in public institutions could be addressed within the strategy.

Another important dimension of this strategy should be related to measures in education. Education regarding discrimination is not included in the curricula at the secondary or higher education levels. On the contrary, as we understood from the interviews conducted, a lot of manuals contain gender biased elements. Only some faculties, especially in Law universities, have included some classes on anti-discrimination and they benefit from trainings supported by Council of Europe.

2.6. Cooperation with civil society

As shown, there are civil society organizations in Georgia that are actively involved in bringing anti-discrimination cases either to the public defender's office or to court. From the interviews held within our research, it appears that they often question the efficiency of the first option, due to the limitation that the public defender's office has in only rendering non-binding recommendations in cases of discrimination. The court system in this case is obviously a more effective way to combat discrimination, since the court is entitled to make legally binding decisions and to grant compensation or restitution or elimination on the act of discrimination.

There is a network of organizations specialized in the various types of discrimination and working together in sending cases to the right organization. A "Coalition for Equality" has been established with

the support of Open Society Georgia Foundation and it unites five NGOs which aim at advancing implementation of the anti-discrimination law and monitoring its practical application. The members of the coalition include: “Georgian Young Lawyers’ Association”, “Human Rights Education and Monitoring Centre”, “Sapari”, “Article 42 of the Constitution” and “Identoba”.

The NGO Coalition for Equality was founded in 2014, when the draft law on anti-discrimination was being developed. Members of the Coalition were actively involved in the process of drafting the law and participated in Committee hearings of the draft at the Parliament.

The aim of the Coalition is to promote awareness raising about anti-discrimination mechanism and implementation of the anti-discrimination law through strategic litigation. The Coalition gives legal consultations to alleged discrimination victims, brings strategic discrimination cases to the Public Defender’s Office and intervenes as a third party in the proceedings. The Coalition also assists the Public Defender with the initiation of legislative changes in the anti-discrimination field.

In regard to raising awareness, the Coalition has published a brochure to inform the public about mechanisms for seeking redress in discrimination cases and has created a video clip, which has been disseminated through TV channels and social media. In February 2015 a hotline of the Coalition became operational (568321221), which is used by the public to report discrimination cases and receive consultations on this matter.

The members of the Coalition work with different aspects of discrimination: EMC deals with discrimination on the basis of homelessness, social status and disability; Identoba works on discrimination based on sexual orientation and gender identity; Article 42 of the Constitution focuses on discrimination based on political opinion; Sapari works on discrimination based on sex and Georgian Young Lawyers’ Association focuses on discrimination on ethnic and racial grounds and discrimination of foreigners.

In February 2015, the “Coalition for Equality” and the Public Defender met to discuss the implementation of the anti-discrimination law, its results, the future challenges and the willingness to

cooperation with all groups working on discrimination issues. The Public Defender provided information on the newly-established Department of Equality of the Public Defender's Office and its future plans and presented a legislative proposal addressed to the Parliament of Georgia for improvement of the Law on the elimination of all forms of discrimination.

They signed a cooperation memorandum on the elimination of discrimination will combine efforts to support implementation of the Law of Georgia "On the Elimination of All Forms of Discrimination", strengthening of the role of the Public Defender and development of Court practice in order to ensure that rights of victims of discrimination are protected.

3.The Romanian experience – best practices and lessons learned

The major difference between the Romanian anti-discrimination institution and the Georgian one is given by the legal status resulted from its legal duties. NCCD Romania is a judicial administrative institution (quasi judicial) which is responsible for review, investigation, observation, monitoring and sanctioning discrimination cases. In exercising its duties, NCCD Romania issues administrative and jurisdictional binding documents (decisions), which can ultimately constitute grounds for obtaining pecuniary damages and/or moral damages in court, if they are considered final and irrevocable.

NCCD Romania has a broader mandate, as the guarantor of respecting equality and non-discrimination principles, of enforcing anti-discrimination legislation, of harmonizing domestic laws which do not comply with the equality and non-discrimination principles and of being the responsible institution for policy making in this area.

In Georgia, the Public Defender, although it has responsibilities characteristic of a quasi judicial entity(registration of complaints, hearings, finding the act of discrimination) has no power to impose penalties, thus, it comes closer to the status of an equality institution with consultative responsibilities and with limited powers. At the same time, it does not have the necessary tools to compel private institutions to provide information, being limited to the recommendation to provide information. The

number of employees is very small, as the allocated budget, even though the large number of cases requires urgent review of these two shortcomings.

3.1. Building equality institutions - The Romanian experience

NCCD Romania was established in 2002 as a result of the integration process requirements of Romania within the European Union. The establishment of NCCD Romania was perceived more as a measure of "ticking off" an obligation as part of the EU accession process, initially the institutional behaviour being one of denial of the existence of discrimination in Romania. This approach generated mistrust among partners from the civil society and also from the external ones.

In 2005 a change in the institutional behaviour was adopted, which consisted of: adopting a new approach on communication through a process of debating real issues concerning the situation of discrimination in Romania, the initiation and involvement of civil society in building the equality institution and improving special legislation as also the development, promotion and adoption of legislative changes that placed NCCD under the authority of Parliament.

NCCD strategy aims at implementing the equality and non-discrimination principles within the organizational culture of the society, so that the key factors in society could develop their own skills and expertise in the field of non-discrimination.

The year 2005 was one of building a conscious institution, NCCD Romania being the beneficiary of a twinning programme in partnership with the Ministry of Security and Justice of the Netherlands. The programme lasted for 18 months and had the goal to strengthen the institutional capacity of NCCD, through the assessment of the organizational culture, by adopting internal and external communication strategies and by initiating training courses for magistrates.

The last legislative amendment in 2013 aimed at improving the sanctions system.

NCCD's relation with:

- Legislative power: NCCD is subordinated to the Parliament; its control is expressed through the debate and approval of the annual report and through inquiries. NCCD offers expertise in the field of non-discrimination through legislative opinions and advisory opinions;
- Executive power: NCCD provides expertise through viewpoints but manifests fairness and neutrality when the executive is accused of discrimination through complaints;
- Judiciary power: has an essential role in promoting the principle of equality and non-discrimination. The expertise gained led to court solutions that comply with international standards. Training courses in discrimination for magistrates were initiated in 2005. The Justice sector took the training courses into their own organizational culture and introduced the ECHR and CJUE jurisprudence in the field of non-discrimination into the curricula for the judicial examinations promotions;
- Political class: NCCD provided expertise to politicians, but remained unbiased and neutral when politicians were accused through petitions that they had committed acts of discrimination;
- NGOs: NCCD has promoted an increased transparency in relation with NGOs, involving them in the process of improving the legal and institutional framework. The presence of NGO representatives in the Board of the NCCD was an added value to the fund of knowledge of the institution. NCCD promotes partnerships with NGOs in preventive activities but adopts a position of neutrality and fairness whenever non-governmental organizations promote complaints that concern possible acts of discrimination within their very own institution;
- Media: communicating the decisions, expressing some positions on current issues in the field of non-discrimination and human rights are essential in the process of preventing activities.

NCCD carries out a significant activity in preparing the Romanian reports on the fulfilment of obligations assumed under international treaties on human rights. The capacity building activity must be a conscious process, planned and permanent.

Immediately after the establishment of CPEDAE, the strategic planning process started. The Strategic Development Programme (hereinafter -PDS) is the founding document of the Council, which establishes its planning system, ensuring prioritization of various objectives and tasks reflected in the Law no.121/2005 on ensuring equality and also within the Regulation of the Board. The document identified gaps on the capacity and tools/methods that are going to be used by the Council in order to achieve its objectives. However, the PDS includes other commitments and obligations of the Council, which derive from the authority mission and/or are stipulated in various international treaties.

PDS is developed for a period of 3 years (2014-2016); for the operational planning of the institution's activity annual action plans are further developed, which provide concrete measures to achieve the PDS, constituting therefore a monitoring and evaluation tool of it. For 2014, the Board has outlined a number of priorities that have targeted the achievement of the Council responsibilities and the administrative development process, as follows:

Shaping and influencing legislation, policies and practices for preventing and combating discrimination:

- Examination of at least 10 normative acts and policy documents in force in terms of equality and non-discrimination (with emphasis on the impact on vulnerable groups);
- Development of proposals and recommendations for at least 25% of notifications for draft legislation;
- Submission of at least 2 projects of public policy to central authorities.

Raising awareness among the population in the legal field in order to claim their right to equality and non-discrimination, mainly among vulnerable social groups:

- Identifying at least 10 partnerships with NGOs and other actors in order to inform people on the subject of non-discrimination;
- Strengthening the presence of the Council in the regions;

- Implement a comprehensive campaign in order to promote diversity and equal opportunities, including the modality of submitting petitions to the Council;
- Identifying at least two partnerships with specialized international organizations in preventing and combating discrimination.

Holistic prevention of discrimination

- Development of at least three methodological recommendations for public authorities and other actors in order to prevent discrimination and ensure equal opportunities;
- Conducting at least 25 visits having the goal to monitor the degree of implementation of the recommendations made by the Council;
- Conducting training activities for public authorities in order to prevent discrimination.

Reinstatement of rights for the people who have suffered from discriminatory acts committed by public authorities and/or by other actors

- Examination of 100% of the total number of complaints received;
- Successful mediation of at least 50% of cases;
- Identifying causes with collective impact and initiate appropriate actions to address them;
- Examining the level of satisfaction of the beneficiaries regarding the services provided by the Council beneficiaries.

As far as the organization and functioning of the Council

- Changing the administrative structure: the introduction of an unit that would ensure the logistics of the Council;
- Speeding up the completion of job descriptions and internal regulatory provisions on the organization and functioning of subdivisions;
- Identifying individual and collective needs of the professional development of the administrative staff and preparation of the annual training plan.

3.2. The role of civil society in the creation and functioning of the anti-discrimination system in Romania

According to the Annual Activity Report of the National Council for Combating Discrimination²⁷, in 2012, 26.64% of the complaint registered within the NCCD came from women, 51.82% of them from men (284), 4.19% from groups of people (23) and 17.33% from the legal entities (95). At the same time, 99.9% of the legal entities were represented by NGOs. Analysing the place of origin of complaints, 93.24% came from urban areas (511) and 6.20% from rural areas (34).

Analysing the criteria of discrimination presented in petitions submitted to NCCD according to the Activity Report for the year 2013, disability, nationality and ethnicity remain at the same percentage, as in previous years. Also, the category mentioned along with the social class and language criteria, are the most represented within the total annual number of petitions received. With the exception of the social class, the process of receiving complaints is kept, in general, within the intervals found in previous years.

The history of the involvement of civil society in the development of the anti-discrimination system in Romania

During the 1990s period, before the adoption of the **Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin** and of the **Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation**, in Romania a group of teachers and experts from NGO's and the Government started working on the legislation on anti-discrimination mechanisms, having as direct source of inspiration the International Convention on the Elimination of all Forms of Racial Discrimination, the effort being supported by the Soros Foundation at the time but

²⁷ Available at: <http://www.cncd.org.ro/files/file/Raport%20de%20activitate%20CNCD%202012.pdf>

remained incomplete until 2000 when the *Government Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination* was adopted.

The involvement of NGOs increased after 2000, when they started a litigation against the Government to oblige it to respect the provisions of the OUG 137/2000 regarding the establishment of the competent institution in the field of non-discrimination, which was finally created in 2002.

Before the EU accession, civil society representatives and the NCCD elaborated in 2006 a set of modifications of OUG 137/2000, to be in accordance with the European legislation (for example NCCD, had to make the transition from a governmental body to an independent body), and NGOs proposed a civil society representative within the Board of the National Council for Combating Discrimination. In 2007, the Anti-Discrimination Coalition manages, through a wide coordination effort and best practices of the organizations (meetings with representatives of parliamentary committees, letters of persuasion, collecting signatures from over 50 organizations to support the application, etc.) to convince members of the legal committee within the Parliament to vote for the representative named by the civil society as a member of the Steering Board of the NCCD.

Profile of NGOs working in the field of non-discrimination in Romania

Generally, Romanian NGOs do not aim to cover the entire area of non-discrimination agenda but rather support the rights of a particular group (Roma, LGBT people, people with disabilities, etc.). The expertise of NGOs is channelled generally to the work undertaken for certain vulnerable groups and the interest for combating discrimination, as a whole, goes from the particular to the general. There is a small number of organizations dedicated to human rights in general. Each organization carries out activities related to anti-discrimination, therefore none are dedicated exclusively to this sector. The existing funding and available staff - human rights organizations are generally small (from 4 to 20 people employed full-time or part-time volunteer with, where appropriate) - contribute to their lack of ability to act solely in the field of anti-discrimination.

As mentioned also within the Activity Report for Romania - *Training in combating discrimination and promoting diversity* conducted by Human European Consultancy, Migration Policy Group,

International Society for Management Diversity and the Legal Resources Centre from 2008²⁸, the reasons that combating discrimination is not necessarily an area of interest for organizations, are linked to **reduced funding for actions of legal assistance, without which we can not talk about a real process of fighting against discrimination**. Another impediment is related to the reluctance of people affected by discriminatory behaviour to act against their perpetrators. The stigmatization of certain groups or categories of persons continues and it's being promoted even today at a high level which determines the lack of action in asserting their rights.

What we can admit that has changed since 2008, when the report was prepared, is the acquired expertise of organizations in the field of anti-discrimination. A series of courses organized by the Open Society Foundations, United Nations Human Rights and other international organizations facilitated the participation of Romanian NGOs which led at acquiring skills and knowledge in the field of non-discrimination but that were not put into practice. So although there is knowledge in the field of non-discrimination, the cases where those information are applied in cases of discrimination, are rare. Unfortunately, this is due to the lack of vision regarding the consequences of discrimination on the individual. For example, NGOs providing services for people with disabilities are unable to meet the legally sufficient range of discrimination they face in accessing services and in their participation in public life.

NGOs' activities in the field of anti-discrimination

Most Romanian organizations do not cover all of the grounds of discrimination as they are mentioned within the OUG 137/2000 on preventing and sanctioning all forms of discrimination: race, nationality, ethnicity, language, religion, social status, beliefs, gender, sex, age, disability, non-contagious chronic disease, HIV infection, membership in a disadvantaged group and any other criteria (few exceptions exists, for sample the Pro Europe League, an NGO created in December 1989).

²⁸Available at: <http://www.idm-diversity.org/files/EU0708-Romania-ro.pdf>

The ethnicity criterion is by far the most covered by organizations from Romania, especially those concerning the rights of Roma population. Romani Criss is an organization with over 10 years of sustained activity in the fight against discriminatory behaviour against Roma population. Since the beginning, Romani Criss was part of the Anti-Discrimination Coalition that was established in Romania with the enactment of the field by adopting the OUG 137/2000. Besides this, a number of other large organizations such as Resource Centre for Roma Communities, Sastipen, and the Community Development Agency *Together* contribute through activities conducted indirectly to combat discrimination against Roma, direct actions are rather conducted by the Anti-Discrimination Coalition or other organizations but only in extremely serious cases.

Moreover, the European Union Agency for Fundamental Rights (FRA) report entitled *The situation of Roma within 11 EU Member States - Survey results at a glance*²⁹ shows that approximately 50% of Roma people in Romania that were surveyed faced discriminatory treatment on ethnicity in the last 12 months.

The NGOs that are defending the rights of people with disabilities -Federation of Disabled People in Romania, Romanian Blind Association, National Association of the Deaf in Romania, the Association of People with Neuromotor Disabilities in Romania – face countless cases of discrimination, especially in regards of accessibility of the physical and communicational environment. Most activities conducted by these organizations for people with disabilities are limited to the provision of support services for them without covering also the field of combating discrimination.

Regarding the rights of LGBT people, there is only one organization based in Bucharest-ACCEPT – which supports and promotes activities for this category but unfortunately the major stigmatization of these people within the Romanian society makes these discrimination cases to remain anonymous, unknown to NCCD or courts. LGBT people are reluctant to declare their sexual orientation and therefore jurisprudence in this situation is non-existent.

²⁹ Available at: http://fra.europa.eu/sites/default/files/fra_uploads/2099-FRA-2012-Roma-at-a-glance_EN.pdf

Another report launched by the European Union Agency for Fundamental Rights, *Fundamental rights: challenges and achievement sin 2011*³⁰ mentions that the Romanian law does not allow the registration of records or extracts of civil status certificates issued by foreign authorities for marriages and civil partnerships between persons of same sex, fact that constitutes discrimination and can lead also to the inability to obtain permits for entry and residence in Romania for spouses or partners³¹.

As mentioned again within the Activity Report for Romania-Training in combating discrimination and promoting diversity, religious discrimination criterion is covered very well by organizations such as Jehovah's Witnesses or Greek Catholics. In contrast, however, the age criterion is hardly a priority for organizations providing services for the elderly or other organizations, in particular.

NGO cooperation with the media to promote and enhance discrimination in Romania

The Media is used as an advocacy tool in any activity/topic on which/whom it wishes to draw attention to population and decision makers. As such, in the non-discrimination field, when NGOs wanted to draw attention to the need to punish an act of discrimination or inconsistency on the NCCD decision in relation to acts of discrimination, the media has been a partner in this regard, promoting the message sent by the organizations.

Unfortunately, often the only cases where the cases are taken and disseminated by the media, are the ones in which the perpetrator of an act of discrimination is a public figure. Many cases of discrimination against Roma people and people with disabilities remain only at an individual, local community level without being submitted to the NCCD or media.

³⁰ Available at: http://fra.europa.eu/sites/default/files/fra_uploads/2211-FRA-2012_Annual-Report-2011_EN.pdf

³¹ According to the Annual Activity Report of the National Council for Combating Discrimination, 2012 available at: <http://www.cncd.org.ro/files/file/Raport%20de%20activitate%20CNCD%202012.pdf>

4. The relation with the EU and the Visa Liberalisation Action Plan (VLAP)

Ten years after the Partnership and Cooperation Agreement between Georgia and the EU entered into force, a Mobility Partnership between the two was signed (2009), aiming at enhancing their cooperation on legal migration, prevention and fight against irregular migration, asylum and international protection³². The Visa Liberalization Dialogue was launched in June 2012, followed by a Visa Liberalization Action Plan in February 2013³³, setting a roadmap for visa free regimes through full compliance with EU conditions for ensuring the mobility of citizens in a secure and well-managed environment.

There is a wide range of issues relevant for the visa liberalisation dialogue and the creation of a secure environment for visa-free travel, which can be found under the four blocks of benchmarks in the Action Plan - (1) document security' including biometrics; (2) integrated border management, migration management, asylum; (3) public order and security; (4) external relations and fundamental rights - and anti-discrimination represents only a part of one of these blocks, namely number 4. Broadly, Block 4 regards human rights and the protection of minorities in connection to the movement of persons, which are only a part of the overall anti-discrimination framework. However, as it is shown in the present report, our analysis and recommendations go beyond the specific benchmarks within the VLAP, since anti-discrimination is a major issue in Georgia's overall relation with the EU, a precondition for the consolidation of democracy and human rights in the country, as well as an obligation assumed by Georgia within various international treaties. The principle of anti-discrimination is, for example, championed in the Association Agreement with the EU, an essential document that governs the relationship between the two parties, a relationship which is based on the principle of more-for-more. More-for-more means additional funding for essential reforms to countries in the Eastern Partnership (EaP) that achieve progress in reforms for deep democracy and human

³²EU-Georgia Visa Dialogue. Action Plan on Visa Liberalization

³³REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL
Second Progress Report on the implementation by Georgia of the Action Plan on Visa
Liberalization, Brussels, 29.10.2014

rights. As such, within our paper, we view conditionalities in the VLAP as merely the ground for building a strong institutional and legal framework that can effectively implement the principle of anti-discrimination at all levels of society.

The mechanism of the VLAP foresees two types of benchmarks, each related to a different stage of implementation: the Ist stage – legal/policy framework and the IInd stage – effective implementation. Two progress reports on the fulfillment of these benchmarks have been presented by the Commission so far, with Georgia already expecting the evaluation on implementation of the second phase. The evaluation of the second Phase consisted of several evaluation visits on all the four blocks; within the 4th block, relevant statistical data on the implementation of the existing legal framework, as well as existing financial plans and strategies meant to ensure a proper implementation were required according to the VLAP document.

So far, Georgia has successfully implemented phase one, which, according to the VLAP document, meant:

- “Adoption of a comprehensive anti-discrimination law, as recommended by UN and Council of Europe Monitoring bodies, to ensure effective protection against discrimination;
- Signature, ratification and transposition into national legislation of relevant UN and Council of Europe instruments in the fight against discrimination, including taking into account the UN convention on statelessness and the standing recommendations of the Council of Europe on the European Charter for Regional or Minority Languages.
- Establish fair and transparent conditions for the acquisition of Georgian citizenship;
- Adoption of a comprehensive National Human Rights Strategy and Action Plan;actively

Pursue in this Strategy and action plan the specific recommendations of UN bodies, OSCE/ODIHR, the Council-of Europe/ECRI and international human rights organizations notably in implementing anti-discrimination policies, protecting minorities and private life

and ensuring the freedom of religion”.³⁴

The present report analyses the process of drafting the anti-discrimination law, its shortcomings as well as potential challenges in its effective implementation.

Within the IInd phase of the VLAP, Georgia faced an assessment on the degree of implementation of the new anti-discrimination law, taking into consideration the following benchmarks:

- Effective implementation of legislation and policies on anti-discrimination, including by ensuring effective legal aid and the independence of the judiciary; implementation of relevant UN and Council of Europe instruments;
- Effective implementation of the National Human Rights Strategy and Action Plan measures to fight against discrimination (including allocation of adequate human and financial resources); general awareness raising campaigns against racism, xenophobia, and other forms of discrimination; strengthening the capacities of responsible bodies for anti-discrimination policy and combating racism, xenophobia and other forms of discrimination³⁵

While, as mentioned, a result of this is expected soon – the evaluation report on the implementation of the 2nd phase – in our view it is still too soon to have a relevant assessment on this and we consider that all the recommendations on the legislative and policy framework, as well as on implementation presented in this report are relevant for the assessments both within the VLAP as well as in general. Whilst the VLAP is focused on creating a secure framework for mobility, the importance of implementing effective anti-discrimination systems also resides in a series of other necessities which have a real connection with VLAP. Thus, Georgia has to enhance its anti-discrimination culture, taking into account the equality and non-discrimination principle as one of the immanent conditions of the respect for human dignity, and providing for an augmented role of the state in this respect, in its capacity of public authority and legislator. The observance of the above-mentioned principle is a condition of lawfulness in the process of adopting the legislative acts and any other regulations, as well

³⁴ EU-Georgia Visa Dialogue. Action Plan on Visa Liberalization, p.12

³⁵ VLAP

as a procedural requirement –measure of the exercise of fundamental rights, it must be respected in the procedure of exercise of any right³⁶.

The decision regarding visa liberalization remains a political one, which will be made by the European Parliament and the Council based on the overall relations with Georgia, as well as on indicators related to irregular migration, asylum and possible migratory and security impacts on the EU of future visa liberalization for Georgia³⁷. This is why we believe it is essential that the efforts to build a sound anti-discrimination framework in the country should go beyond EU conditionalities on this matter, while still using these as an incentive both for the population and for decision-makers.

5. Conclusions and recommendations

5.1. Conclusions

As previously mentioned, Georgia took **important steps in implementing a comprehensive anti-discrimination approach** both at the legal, as well as at the institutional level, meeting the benchmarks within the First Phase of the VLAP and passing on to the next phase. The promotion of the anti-discrimination law is a major step toward a coherent national anti-discrimination system, since it establishes a national equality body, the PDG, and builds a national anti-discrimination common language and architecture. To this end, the anti-discrimination provisions in the other corpuses of law (e.g. Civil or Criminal codes) gain further leverage for implementation. However, as shown in the present report, the existent framework does not ensure the basis needed for an effective implementation. As the experience of Romania indicates, the external pressure of EU benchmarks can prove to be a very powerful tool for achieving reforms in countries that want to deepen their relation with the EU. However, there is also a risk and a tendency to adopt the minimal version of EU recommendations and, as such, that the measures taken are not substantial enough as to ensure effective

³⁶ Csaba Ferenc, Asztalos in NCCD's publication, *The right to equality and non-discrimination in the management of justice – Training manual, 2012, page 17, accessible at <http://www.cncd.org.ro/publicatii/Studii-3/>*

³⁷ Idem, p.2

implementation on the long term.

The Association Agreement with the EU is an important development in the relations between the two parties. However, the deepened relations with the EU are not to be taken for granted. Recent experiences show that events like the euro crisis or Russia's aggression towards EaP countries have the power to reduce Europe's appetite for enlargement, as the statement of the President of the European Commission Jean-Claude Juncker proves.³⁸ Moreover, recent terrorist events and threats within European countries have pushed for talks on new measures for enhancing internal security and, inherently, for higher control on the freedom of movement within and outside of the EU. Whilst there are high expectations in regards to a positive evaluation of the second phase of the Visa Liberalization Action Plan which will happen within the following months, there are still Member States that are not in favor of this. Regardless of the results of the VLAP process, we recommend that all the actors involved should use this opportunity of external pressure (regarding VLAP and the Association Agreement) to advance a maximal agenda of reforms and measures in this field that is able to ensure a functional system for protection against discrimination.

To this end, **one of the most important issues to be solved as soon as possible is related to PDG empowerment with sanctioning powers**, in order to give a certain weight to the provisions of the anti-discrimination law. A clear-cut sanctions regime that can be applied by the PDG as in the case of the Romanian National Council for Combating Discrimination would have beneficial effects and would encourage the Georgian population to apply for protection in discrimination cases.

Another side of PDG empowerment is **related to the low level of the allotted resources, both human as well as financial**, which is hindering the Defender in fulfilling its anti-discrimination duties, especially with regard of monitoring the elimination of discrimination. Despite the lack of resources, there is a will and notable results of the representatives of the equality institution in fulfilling the legal powers in the anti-discrimination field and for reaching a reasonable implementation level.

³⁸ At his nomination for the Presidency of the European Commission, Jean-Claude Juncker declared that there will be no enlargement in the next five years

The membership in Equinet (the PDG applied for it, but the membership has not been granted yet) **would enhance the PDG capacity** in tackling anti-discrimination cases, as well as in designing sound anti-discrimination policies, taking into account the extensive experience of other European equality bodies, part of the network.

Possible causes for the low number of complaints (84 managed by the PDG, and even fewer arrived in the Court) that should be addressed are: the lack of knowledge of citizens of anti-discrimination legislation, the lack of reasonable knowledge of the field by the law enforcement agencies representatives, the duration of settlement procedures as well as the lack of trust in law enforcement agencies.

Furthermore, currently **there are no efficient instruments to provide a sectorial approach to prevent and combat discrimination** in employment, economic activity, access to goods and public, administrative, legal services and other facilities, access to health, access to education and the protection of human dignity. At the same time, there are not stipulated obligations for ministries in implementing public policies in different domains – employment, health, justice, administration, internal affairs, and education.

Last, but not least, general awareness raising campaigns against racism, xenophobia and other forms of discrimination are reduced and are mainly sustained by non-governmental organizations, with the support of international donors.

Given the current situation in Abkhazia and South Ossetia, **other important issues with discrimination dimensions are related to the free movement of foreign persons, refugees, asylum-seekers and stateless persons, as well as the state of minorities**. As previously mentioned in the report, the lack of instruments for monitoring the living conditions and protection of these categories, as well as the diminished budgets impede on a proper management of such issues.

5.2. Recommendations

5.2.1. Recommendations regarding the policy framework (legislation and planning)

- A significant progress in the legislative field of non-discrimination would be determined by the the following changes in the *Law on Elimination of All Forms of Discrimination*:
 - a) introducing new provisions regarding Equality Department’s authority to impose **sanctions on the offenders**, as well as to **issue a mandatory act on elimination of discrimination in respect of a relevant agency without the need to address the court**. To provide this possibility to the Equality Department **it needs to be established as a separate body from the PDG**.
 - b) introducing new provisions regarding **an enforcement mechanism to oblige private persons or entities to provide all the materials related to the case hearing**;
 - c) introducing new provisions regarding **increasing the statute of limitations of applying to the Court using the anti-discrimination law from 3 months up to at least 1 year**;
 - d) introducing new provisions **authorizing the NGOs and interested parties to provide amicus curiae during court proceedings**.

- As regards other connected pieces of legislation, the **Law on Gender Equality** should be amended so as to include an enforcement mechanism and legislative amendments in the **Criminal Code** to criminalize incitement to violence should be finalized, with guarantees being provided that this will be used to protect vulnerable groups.

- Georgian legislators should also take into consideration the ratification and harmonization of national legislation as soon as possible with regard to international conventions for which it hasn’t yet done so:
 - a) **harmonization of the national legislation with the CRPD and ratification of CRPD Optional Protocol**;

b) **ratification of the Istanbul Convention against domestic violence and introducing the amendments to national legislation related to it.**

- Besides the legislative framework, the strategic and policy framework should be further developed, either by enhancing and particularizing the anti-discrimination provisions of the National Strategy for the Protection of Human Rights in Georgia 2014-2020, or by designing **an anti-discrimination strategy stating specific quantitative and qualitative indicators**, as well as **a mechanism of monitoring and evaluation through periodic progress reports**. The strategy should provide a sectorial approach to prevent and combat discrimination in employment, access to goods and public, administrative, legal services and other facilities, access to health, access to education and the protection of human dignity. It should also include obligations for ministries in implementing public policies - employment, health, justice, administration, internal affairs, and education. Details regarding what areas of intervention should the strategy cover are provided at point 2.5.

5.2.2. Recommendations for implementation

- The experience of Romania, as well as other European countries, shows that a special accent should be placed on **the monitoring process as an integral part of the implementation of the anti-discrimination policy**, since having a monitoring mechanism in place is essential in analysing the efficiency of the anti-discrimination policy framework.

For this, several aspects need to be taken into consideration:

- Having in place an anti-discrimination strategy and action plan, with clear indicators.
- Having a designated agency responsible with the collection of information, analysis and application of monitoring results, as well as dissemination among other stakeholders.
- Establishing what type of information will be collected and how it will be stored, as well as what are the mechanisms by which the results of data collection and analysis are used in adapting or changing anti-discrimination policies.

- As regards the main obstacles and solutions in implementing the legal framework identified in the report, such as raising the access of the population to information about the legal means and importance of seeking redress for discrimination cases, we recommend that the following courses of action are taken into account:
- **planned measures to increase public awareness with regard to the anti-discrimination legal provisions and national, as well as international mechanisms;**
 - **awareness raising campaigns regarding anti-discrimination principles;**
 - **providing legal aid to vulnerable categories.**

The first step in increasing public awareness on anti-discrimination issues is to build a strong relation with the media. The PDG should actively communicate the decisions to media representatives and express positions on current issues in the field of non-discrimination and human rights.

Secondly, since NGOs already have a sustained activity in raising awareness and providing direct assistance to victims of discrimination (as shown in the report) and taking into account the reduced number of staff in the Equality Department of the PDG, an alternative measure that can be considered **on the long term, when traditional international donors on these issues will withdraw is introducing a line of public financing for NGOs in the field of information and awareness raising campaigns**, with annual calls for proposals and a transparent system of evaluation of proposals on a competitive basis. If there is no capacity at the PDG level to oversee the competitive procedure, as well as the implementation and evaluation of funds, a third party could be temporarily engaged in this process (e.g. an international organization such as UNDP). This has functioned well in Romania, where the projects implemented by NGOs in, for example, the annual ODA programme supported by the Ministry of Foreign Affairs, are evaluated and implemented with the technical support of UNDP.

As regards legal aid provided by NGOs to members of vulnerable categories (such as support in addressing the court in discrimination cases), the experience of Romania showed that the funds that NGOs could access for projects in this area had significantly been reduced over time, especially when the main foreign donors in the country that supported this type of actions had withdrawn. This is why

we believe that **a measure which would allow public funds to be allocated for core funding or operating grants for NGOs to fulfil this mission** is worth taking into consideration, also not as an immediate measure, but on the long term.

- Aside from increasing NGO capacities, all actors involved should be taken into consideration. First and foremost, it is very important to enhance the capacities of the Equality Department in the PDG's office, by both **increasing the number of staff, as well as securing a higher budget for anti-discrimination measures**. Since most prevention and support activities for the victims of discrimination are performed by NGOs and financed by international donors, a feasible budgetary strategy is very important in ensuring the sustainability of activities in the field of anti-discrimination.
- Another essential measure to be taken is to increase the capacities of law enforcement and judicial systems in the field of anti-discrimination, through **specific trainings to law enforcement officials, prosecutors and judges** – whilst we understood that trainings for law enforcement officials have been organized in the past, they haven't registered visible results, which could be a consequence of the fact that there is no strategic approach of permanent education in the field of non-discrimination among all these actors, as well as of the fact that this is a long-term process. An useful tool in teaching non-discrimination law is the Handbook of European non-discrimination law edited by the European Council and the Fundamental Rights Agency, available in electronic format.

Another potential beneficial measure would be to **introduce the ECHR and CJUE jurisprudence in the field of non-discrimination into the curricula for examinations in the judicial system** and/or to **include the principle of anti-discrimination**, among other constitutional values of respect for human rights, **in every training course and program for active judges and candidates**.

- We also recommend introducing **labour inspectors**, who should play an important part in securing that anti-discrimination provisions in the Labour code are respected.

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- Good governance
- Strengthening democracy and the rule of law
- Economic development
- Education, vocational training and employment
- Health
- Development of infrastructure and environment protection

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